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OFFICE OF PETITIONS

In re Patent of Spurgat et al.	:	DECISION ON REQUEST
Patent No. 7,620,363	:	FOR RECONSIDERATION OF
Issue Date: November 17, 2009	:	PATENT TERM ADJUSTMENT
Application No. 09/858,415	:	AND NOTICE OF INTENT TO
Filing Date: May 16, 2001	:	ISSUE CERTIFICATE OF
Attorney Docket No. 10587.0057-00000	:	CORRECTION

This is a decision on the petition filed on January 19, 2010, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by seven hundred ninety-eight (798) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by seven hundred ninety-eight (798) days is **GRANTED to the extent indicated herein.**

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

The periods of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") and 35 U.S.C. § 154(b)(2)(C) ("Applicant Delay") are not in dispute. The period of A Delay is 842 days and the period of Applicant Delay is 437 days.

Petitioners assert delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") is 393 days. The application was filed on May 16, 2001, and a request for continued examination ("RCE") was filed on June 13, 2005. B Delay does not include the date on which the RCE is filed. Therefore, B Delay is a 392-day period from May 16, 2004 until June 12, 2005.

With respect to the period of adjustment for the Office taking in excess of three years to issue the patent, 35 U.S.C. § 154(b)(2)(A) limits Office delay to the sum of delay under A Delay and B Delay to the extent such periods of delay are not overlapping. Petitioners' calculation of patent

term adjustment fails to address overlap between A Delay and B Delay. The Office has determined that the period of overlapping delay is 61 days.

In view of the prior discussion, the patent term is 737 days, which is the sum of 842 days of A Delay and 392 days of B Delay reduced by 61 days of overlapping delay and reduced by 437 days of applicant delay.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **seven hundred thirty-six (736)** days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

**UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION**

PATENT NO. : 7,620,363 B2
APPLICATION NO. : 09/858,415
DATED : November 17, 2009
INVENTOR(S) : Jeffrey Jonathan Spurgat et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 405 days.

Delete the phrase "by 405 days" and insert -- by 736 days--